his employment. *Wolfgram* v. *Modern Woodmen of America* (Mo. App. 1912), 149 S. W. 1167.

The construction of equivocal language in favor of the insured, and the strict application of the doctrine of proximate cause where excepted risks are involved, is the justification for this case. To escape liability, the insurer must first expressly limit and define the excepted risk. *Union Cent'l Life Co.* v. *Hughes,* 110 Ky. 26, 60 S. W. 850; *Hobbs* v. *Iowa Mut. Ben. Asso.,* 82 Iowa 107, 11 L. R. A. 299, 31 Am. St. Rep. 466; *Welts* v. *Conn. Mut. Life Ins. Co.,* 48 N. Y. 34; *Pohalski* v. *Mut. Life Ins. Co.,* 36 N. Y. Super. Ct. 234. The case of *Diseker* v. *Equitable Life,* 87 S. C. 187, 69 S. E. 153, which holds that firing a switch engine is within the exception, "of switching and coupling cars" appears to stand alone in tending toward a contrary doctrine. Mere casual employment in the forbidden occupation will not exempt the insurer, *Tucker* v. *Mut. Ben. Life. Ins. Co.,* 50 Hun. 50, affirmed in 121 N. Y. 718. Neither will such employment if it is only incidental to the insured's ordinary occupation, *Mortenson* v .*Cent'l Life Assur. Asso.,* 124 Iowa 277; *Holliday* v. *Am. Mut. Accident Asso.,* 103 Iowa 178. After the company has established as a fact that the insured met his death while engaged in a forbidden occupation, it must further prove that such occupation was the proximate cause of the death. *Summers* v. *U. S. Ins. Co.,* 13 La. Ann. 504; *Queatham* v. *M. W. A.,* 148 Mo. App. 33; *Freeman* v. *Merchantile Accident Asso.,* 156 Mass. 351, 17 L. R. A. 753, and cases *supra.*

INSURANCE.—EXPRESS WAIVER OF PROOFS OF LOSS.—The insured, through no fault of the insurer neglected to furnish formal proofs of loss within the specified period. After such time had elapsed, the insurer's agent, with due authority, said to the insured; "Certainly we are not technical. We will waive the formal proofs of loss." *Held*: This statement constituted a valid waiver. *Hatcher* v. *Sovereign Fire Assurance Co.,* (Wash. 1912), 127 Pac. 588.

Courts, uniformly adverse to forfeitures, especially for conditions that are to be performed subsequent to the loss, are disposed to construe slight circumstances as a waiver of an estoppel in favor of the insured. The principal case presents in its boldest form the theory that an express waiver of non-performance of such conditions need not be supported by either a consideration or any element of estoppel. This is in accord with the majority of cases. Some courts held that there can be an *implied* waiver of the breach of such conditions after the time for submitting proofs has passed, without any consideration or element of estoppel. These courts require only an intention to waive. *Rokes* v. *Amazon Ins. Co.,* 51 Md. 512, 34 Am. Rep. 323; *Hibernian Ins. Co.* v. *O'Connor,* 29 Mich. 241; *Fink* v. *Lancashire Ins. Co.,* 66 Mo. App. 513; *Ramsey* v. *Gen'l. Accident, Fire & Life Ins. Co.,* 160 Mo. App. 236, 142 S. W. 763; *Prentice* v. *Knickerbocker Life Ins. Co.,* 77 N. Y. 483; *Dobson* v. *Hartford Fire Ins. Co.,* 86 App. Div. (N. Y.) 115. affirmed 179 N. Y. 557; *Johnson* v. *Dakota Fire & Marine Ins. Co.,* 1 N. D. 167, 45 N. W. 799; *United Fireman's Ins. Co.* v. *Kukral et al.,* 7 O. Cir. Ct. 356, 4 O. C. Dec. 633, affirmed 51 O. St. 609; 9 COL. L. REV. 251. See generally, *Germania*

*Fire Ins. Co.* v. *Pitcher,* 160 Ind. 392, 64 N. E. 921; Other courts hold there cannot be *implied* waiver after the time for furnishing proofs has elapsed, without a new consideration or an element of estoppel. *Commercial Fire Ins. Co.* v. *Waldron,* 88 Ark. 120, 114 S. W. 210; *Fidelity & Casualty Co.,* v. *Sanders,* 32 Ind. App. 448, 454; *Burlington Ins. Co.* v. *Ross,* 48 Kan. 228; *State Ins. Co.* v. *School Dist.* 66 Kan. 77, 71 Pac. 272; *Dale* v. *Continental Ins. Co.,* 95 Tenn. 38, 50; *McPike* v. *Western Assur. Co.,* 61 Miss. 37; *Employers' Liability Assur. Co.* v. *Rochelle,* 13 Tex. Civ. App. 232; *Merchants' Mut. Ins. Co.* v. *Lacroix,* 45 Tex. 158. *Hart* v. *Fraternal Alliance,* 108 Wis. 490. RICHARDS, INS., (3rd Ed.) § 122; VANCE, INS. 374. The position of these latter cases seems to be the correct one on principle, for otherwise, by calling a transaction a waiver of a forfeiture, courts come dangerously near to creating a new contract without consideration. However, the principal case, which represents the majority view, dispenses with strict theory in an effort to effect practical justice.

JUDGMENT—FAILURE OF JUDGE TO TAKE OATH—COLLATERAL ATTACK.—Defendant was found guilty of the unlawful sale of liquor. The case was tried by a special judge, who was elected according to statute in the absence of the regular judge. The clerk's entry upon the minutes did not show that the judge had taken the oath (prescribed by statute) that he had not participated in a duel since the adoption of the constitution. Defendant claims that the failure of the clerk's entry to show that this oath against dueling was administered to the judge rendered void all the proceedings in the court. *Held,* "The omission to administer this oath was an error which does not touch the merits of this case," and the former judgment stands. *Harness* v. *State,* (Tenn. 1912), 149 S. W. 911.

"Special judges are generally required to take oath of office before entering on the performance of their duties," 23 Cyc. 608 and cases cited; *State* v *Burnett,* 47 W. Va. 731, 35 S. E. 983. However it has been held that the judgments of a judge *pro tem,* elected by the bar, in conformity with the statute, are not void because he failed to qualify by taking the oath of office. *In re Hewes,* 62 Kan. 288, 62 Pac. 673; *Powers* v. *State,* 83 Miss. 691, 36 So. 6; *State* v. *Miller,* 111 Mo. 542, 20 S. W. 243. The objection that a special judge failed to take the oath of office is waived when not raised during the trial, *Johnson* v. *Jackson,* 130 Ky. 751, 114 S .W. 260. Also, under a statute providing that a special judge must possess "all the qualifications of a circuit judge, * * *" it is not necessary that a special judge shall be a resident of the district, *Commonwealth* v. *Carnes,* 30 Ky. L. Rep. 506, 98 S. W. 1045.

JURISDICTION—COUNTERCLAIM IN EXCESS OF COURT'S JURISDICTION.—The plaintiff filed a complaint in the County Court for $1,060 as balance due for rent. Defendant counterclaimed, asking damages in the sum of $2,350. By statute the County Court's jurisdictional limit was not to exceed $2,000. Defendant claims that upon the filing of the counterclaim for an amount in excess of this sum, the County Court was ousted of jurisdiction. *Held,*—The County Court was not ousted of jurisdiction over plaintiff's action, but defendant's counterclaim was placed out of such court, leaving the County